

STATE OF MINNESOTA  
IN SUPREME COURT  
A08-2169

Norm Coleman et al.,

Petitioners,

**VS.**

AFFIDAVIT OF  
JAMES R. GELBMANN

Mark Ritchie, Minnesota Secretary of State,  
the Minnesota State Canvassing Board,  
Isanti County Canvassing Board, et al.,

Respondents,

Al Franken for Senate and Al Franken,

### Intervenor-Respondent.

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF RAMSEY )

James R. Gelbmann, being first duly sworn, deposes and says as follows:

1. I am James R. Gelbmann, Deputy Secretary of State in the Office of the Secretary of State. I have held this position since May, 2009.
2. In my capacity as Deputy Secretary of State, I have been involved with the recount for United States Senate and with the compliance of the Office of the Secretary of State with paragraph 3 of the Order of the Supreme Court in this case dated December 18, 2008 as well as with paragraph 2 of the Modified Order of the Supreme Court in this case dated December 24, 2008.
3. In response to these Orders, a meeting was held on December 19, 2008 at Room 117 of the Minnesota State Retirement System Building, 60 Empire Drive,

commencing at 4:20 P.M., among representatives of the Coleman and Franken campaigns, representatives of the Secretary of State, several county auditors, the staff of the Attorney General, staff of the Hennepin County Attorney and staff of the Ramsey County Attorney. I attended this meeting. At this meeting, there was a discussion by all participants of how they might establish and implement a process, as expeditiously as practicable, for the purpose of carrying out the Order. A draft plan, was distributed to the attendees. It was also agreed that, in response to privacy concerns raised by counties and also concerns about the logistics of evaluating the ballots in 87 or more locations as well as holding 87 county canvassing board meetings, that the representatives of the Attorney General, the Hennepin County Attorney and the Ramsey County Attorney would draft a suggested Proposed Joint Motion for the partial revision of the Order.

4. It was also agreed that there would be another meeting to further pursue implementation plans on Monday, December 22, 2008, at 9 A.M. at the State Office Building. That meeting took place in Room 10 of that building.

5. A conference call was conducted at 3:30 PM, December 22, 2008 with the representatives of the Coleman and Franken campaigns, the Secretary of State and members of his staff, and a member of the staff of the Attorney General.

6. On December 24, 2008 at 11:00 A.M., a conference call was held between the persons required by the Order of December 24, 2008 to agree to a procedure for the implementation of the Order. At the conference call, a procedure was agreed to by all parties, subject to edits to be circulated by email. The edits were circulated and agreed to

either as proposed or with modifications, resulting in the Final Process document that is attached as Exhibit A.

7. As of December 29, 2008, local election officials had submitted spreadsheets identifying approximately 1,346 absentee ballot envelopes they believed to have been erroneously rejected.

8. During the weekend of December 27 and 28, 2008, pursuant to paragraph 11 of Exhibit A, campaigns were to have negotiated privately to agree upon the counting of ballots and to narrow the universe of ballots with respect to which there were still issues.

9. On December 29, 2008, at 10:00 A.M. a more public negotiation on these same issues took place, pursuant to paragraph 14 of Exhibit A. That meeting lasted for approximately 45 minutes, and was then recessed until 3 P.M. The meeting reconvened shortly after 3 P.M. A list of ballots proposed to be added to the universe of ballots to be reviewed was received by email from the Coleman representatives. The email was addressed to the Secretary of State and the Franken campaign representatives and was received by the Secretary of State at 3:11 P.M. The list was not agreed to by the Franken campaign representatives and was specifically rejected by the Franken campaign representatives in an email later that night.

10. Upon information and belief, the local election officials met with campaign representatives from both campaigns in their counties or at regional meetings as provided for in paragraphs 16 to 20 of Exhibit A, and as indicated in the schedule attached to this affidavit as Exhibit B. Those meetings have been occurring on Tuesday, December 30,



2008; Wednesday, December 31, 2008; and Friday, January 2, 2009, as required by the Modified Order of the Court, and those meetings are now complete.

11. Ballots have been forwarded to the Secretary of State as required by the Modified Order and by paragraph 20 of Exhibit A. By 4:30 P.M., the Office has received 953 ballot envelopes.

12. The counting of those ballots agreed upon by the local election officials, and the representatives of the two campaigns, and forwarded pursuant to paragraph 20 of Exhibit A is scheduled to commence at 9 A.M. on Saturday, January 3, 2009, at the State Office Building in Saint Paul. Pursuant to paragraph 2 of the Modified Order of the Supreme Court, the result of that count is to be reported, subject to challenges, to the State Canvassing Board and integrated into the recount results.

FURTHER YOUR AFFIANT SAYETH NOT.

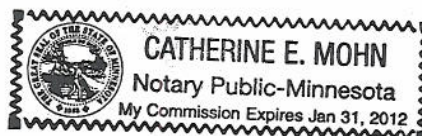
Dated: January 2, 2009

  
James R. Gelbmann

Subscribed and sworn to before me  
on this January 2, 2009



Catherine Mohn  
Notary Public



# EXHIBIT A

## **Processing Improperly Rejected Absentee Ballots for US Senator**

As directed by the State Supreme Court, the following process is established to ensure for the proper inclusion of wrongly rejected absentee ballots into county canvassing reports.

1. The Supreme Court has ordered that local elected officials must identify all wrongly rejected absentee ballots for consideration by candidate representatives. Under Minnesota law all absentee ballots are accepted unless they have been rejected for one or more of four specific reasons outlined in Minnesota statute.
2. Local election officials (county and city where appropriate) will identify wrongly rejected absentee ballots and then create a spreadsheet listing all believed to have been rejected in error. This spreadsheet will be used to ultimately determine the ballots you recommend be opened and counted.
3. Those counties and cities that have already completed a sorting of their rejected Absentee Ballots into five categories should include the ballots placed into the category five for both regular and UOCAVA ballots and should do a review of any other rejected Absentee Ballots that you believe may have been improperly rejected.
4. Those counties that have not completed a sorting of their rejected Absentee Ballots should do this as soon as possible, either in a public or private setting. Under the Supreme Court Order, there is no requirement that this sorting be completed as a public process.
5. All wrongly rejected absentee ballots identified by local election officials will be entered into a spreadsheet that lists the name and address of the voter, the precinct and any information available about why the ballot was rejected. This list entered into the spreadsheet should include every ballot that meets the four requirements outlined in Minn. Stat. Sec. 203B.12, subd. 2, and, for UOCAVA ballots, 203B.24 and 203B.25 and was nonetheless rejected. Local election officials will not be simply relying on the reason stated on the envelope for determining if the ballot was properly rejected. For example, if the reason for rejecting the Absentee Ballot states on the envelope: "voter not registered," local officials will verify whether that the voter was registered or not and provide both campaigns and the office of the Secretary of State with a letter certifying that the voter was registered to vote in that precinct.
- 5a. For all absentee ballots that the local elected official believes were wrongly rejected, the local elected official will check the pre-registered election day roster and verify the voter did not vote on election day. The local election official will provide both campaigns and the office of the Secretary of State with a letter certifying that they have completed this review of the roster.
6. No one will open any secrecy envelopes or count any ballots during the spreadsheet creation process.
7. As soon as they are completed, and in no case later than 5:00 p.m. on December 24, 2008, these spreadsheets will be emailed to the Secretary of State's Office and to the campaigns at the following addresses:

trimblelegals@earthlink.net <<mailto:trimblelegals@earthlink.net>>; fknaak@klaw.us



KHamilton@perkinscoie.com <<mailto:KHamilton@perkinscoie.com>>

dlillehaug@fredlaw.com <<mailto:dlillehaug@fredlaw.com>> .

Jim.gelbmann@state.mn.us

8. To clearly identify the spreadsheet as the complete list of all wrongly rejected absentee ballots being recommended for opening local election officials will place the following notation in the Subject Heading for the e-mail: "(name of jurisdiction)'s Recommended ABs Pursuant To Court Order."

9. Counties where there are zero wrongly rejected absentee ballots will send an email to the Office of the Secretary of State and to campaigns at the addresses listed above to confirm this by 5:00 p.m. on December 24, 2008. Again, even if a county has already done this, it is important to do this again to verify that a careful review was completed and that there are no obvious errors. Please send emails stating that there are no wrongfully rejected absentee ballots to with the Subject Heading "(name of jurisdiction) Has NO Recommended ABs Pursuant To Court Order."

10. Local election officials will provide copies of the envelopes and application forms to each campaign, if they have not already done so. This is needed prior to 5:00 p.m. on Friday, December 26th so that they can review the lists. **Local election officials shall redact any non-public information included on the applications and/or envelopes.** If a county is unable to provide this information to the campaigns by Friday, December 26<sup>th</sup>, they should do so as early as possible and be prepared to have the information available for the candidates' representatives to review at the county or regional meeting. Candidate representatives must be able to review absentee ballot applications and/or registration applications regarding mismatching signatures, lack of signatures, mismatching address and other incompleteness. Counties must bring these materials to regional meeting if not provided by Friday, December 26.

11. Prior to 10:00 a.m. on Monday, December 29<sup>th</sup>, representatives of the two campaigns will work together to review the spreadsheets provided by the local officials and identify, without prejudice:

- a) The Rejected Absentee ballots listed on the spreadsheets that both parties agree were wrongfully rejected. The candidates' representatives will provide the Secretary of State's Office and the local officials with a list of absentee ballots they agree have been wrongfully rejected. These ballots will be forwarded to the Secretary of State's Office by the local election officials for receipt prior to 11:59 p.m. January 2, 2009.
- b) Any additional Rejected Absentee Ballots they would like to add to the list. The candidates' representatives will provide the Secretary of State's Office and the local officials with a list of the additional ballots either candidate's representative wants added to the list of wrongfully-rejected absentee ballots along with a notation whether both candidates' representatives agree the ballot was wrongfully rejected.
- c) The Rejected Absentee ballots on the spreadsheets provided by the local election officials that one or both candidate representatives disagree were wrongfully rejected. The candidates' representatives will provide the Secretary of State's Office and the local officials with a list of the rejected absentee ballots for which one or both candidate



representatives disagree were wrongfully rejected, indicating which candidate representative(s) disagreed the ballot was wrongfully rejected.

- d) Additional materials that will be needed from individual counties to verify one or more absentee ballot was rejected in error. The candidates' representatives will provide the Secretary of State's Office and the local officials with a list of the additional materials that must be available at the county or regional meeting.

12. Candidate representatives agree to rely on the certification by local election officials that a registered voter who had his or her absentee ballot rejected did not vote on election day if the candidates' representatives cannot verify that a voter is registered according to the Secretary of State's database.

13. For non-registered absentee ballot envelopes, the local election official shall verify that the individual was not registered as of October 14, 2008. If the individual did not register prior to that date and the local election official certifies that a voter registration card was found in the Absentee Ballot envelope, Candidates' representatives may reserve the right to question whether that individual voted in person on election-day. The local election official shall bring the election-day roster for that individual's precinct to the county or regional review location identified in paragraphs 16 and 17.

14. At 10:00 a.m. Monday, December 29<sup>th</sup>, the candidate representatives and representatives from the Office of the Secretary of State's Office will meet in the State Office Building (room to be determined) to discuss rejected absentee ballots that are listed in 11 (b), 11 (c) and 11 (d). The purpose of the meeting will be to attempt to reach consensus on the actual status of the rejected absentee ballots that are included in these categories.

15. By 3:00 p.m. on Monday, December 29<sup>th</sup>, the candidates' representatives will forward to the local election officials a list of all additional rejected absentee ballots for which both candidates' representatives now agree were wrongfully rejected. At the same time, they shall forward to the local election officials a list of all rejected absentee ballots for which one or more candidates' representative(s) do not agree were wrongfully rejected. Local officials shall use the second list described in this paragraph to prepare materials for county or regional meetings which will occur on December 30, 31 and January 2<sup>nd</sup>. These materials shall include voter rosters for the precincts in question, absentee ballot applications, absentee ballot envelopes, and additional materials identified in 11 (d).

16. Local election officials must determine if they intend to participate in a regional meeting where candidates' representatives will be allowed to review the rejected absentee ballots in dispute or if they want to hold such a meeting in their own county. A list of regional locations, including a meeting at the Secretary of State's Office on January 2<sup>nd</sup>, will be announced by close of business on Friday, December 26<sup>th</sup>. If a local election official agrees to participate in a regional meeting, he or she will bring all envelopes and other materials related to the absentee ballots about which there is disagreement as to whether they were wrongly rejected to one of several central locations at a prescribed date and time. In addition to the ballot envelopes local elections officials identified, local officials will also bring any additional ballot envelopes related to absentee voters suggested by one or more of the candidates' representatives that they believe have been wrongly rejected, including original applications, envelopes, voter rosters, etc.



17. The individual county meetings and centralized reviews will occur between December 30th and January 2nd. County auditors who intend to hold their own meetings shall designate a date, time and place to process the rejected absentee ballots in question. The date, time and location for the regional meetings shall occur during the same time period and the Secretary of State's Office shall note which jurisdictions' rejected absentee ballots will be reviewed at each regional meeting. Notice must be given to the candidate representatives and the Secretary of State's Office at least 24 hours before any of the meetings are to begin. Local officials who intend to schedule a meeting on Tuesday, December 30<sup>th</sup>, should notify candidate representatives of the date, time and place of the meeting by close of business on Friday, December 26<sup>th</sup>, knowing that such a meeting may need to be cancelled depending upon the outcome of negotiations between the candidate representatives and the Office of the Secretary of State over the weekend of December 27<sup>th</sup>. This meeting must be open to the public.

18. For those ballots where there is disagreement about whether it was rejected in error, the election official will review the voter's absentee ballot application, the absentee ballot envelope, the voter's certificate if it is not printed on the envelope, and the roster to determine whether or not it was rejected for one of the reasons laid out in Minnesota Statutes, sections 203B.12, subd. 2 or, for UOCAVA ballots, 203B.24 and 203B.25. Each candidate's representative may designate two representatives to observe this review and to inspect the absentee ballot envelope, but not the voter roster.

19. If the local election official or representative from any of the campaigns does not agree that the ballot was rejected in error, they must sign a statement to that effect about each ballot, laying out the statutory grounds under which it was properly rejected. After the review, these envelopes will be brought back to the county or city and stored securely with their other election materials.

20. All rejected absentee ballot envelopes upon which representatives of both candidates and the local election officials agree were wrongfully rejected shall be forwarded to the Office of the Secretary of State for receipt no later than 11:59 p.m., Friday, January 2<sup>nd</sup>.

21. The county auditor shall store the absentee ballots that all parties agree were wrongly rejected securely until they are transmitted to the Secretary of State, in the secure manner prescribed by the Secretary of State.

22. The Office of the Secretary of State will open, sort and count all of the received ballots in a public setting. As in the recount, campaign representatives may challenge the determination of the Office of the Secretary of State based upon voter intent or identifying marks. Challenged ballots will be brought before the State Canvassing Board for final determination.

23. These votes will be incorporated into the recount totals before the State Canvassing Board certifies the result of the US Senate race and reported to the State Canvassing Board by the Secretary of State for certification by the State Canvassing Board.

# EXHIBIT B



## Statewide Regional Meeting Schedule

### TUESDAY, DECEMBER 30TH

County Board Room  
Saint Louis County Courthouse  
100 North Fifth Avenue  
Duluth, MN  
9:00 a.m.

County Board Room  
Beltrami County  
Bemidji, MN  
10:00 a.m. to 3:00 p.m.

Council Board Chambers and  
Conference Room 1  
Olmsted County  
Rochester, Minnesota  
1:00 p.m.

Kandiyohi Government Center  
Kandiyohi County  
2200 23rd Street NE  
Willmar, MN  
1:30 p.m.

County Board Room  
Sherburne County  
Sherburne County Government Center  
Highway 10  
Elk River, MN  
8:30 a.m.

Room 710  
Anoka County  
Anoka County Government Center  
Anoka, MN  
9:00 a.m.

County Board Room  
Dakota County  
1590 Highway 55  
Hastings, MN  
1:00 p.m.

### WEDNESDAY, DECEMBER 31ST

County Board Room  
Dakota County  
1590 Highway 55  
Hastings, MN  
9:00 a.m. (Continued From Tuesday)

Wright County Government Center  
Room 120A/B  
10 2<sup>nd</sup> Street NW  
Buffalo, MN 55313  
9:00 a.m.

First Floor Auditorium  
Blue Earth County Government Center  
410 South Fifth Street  
Mankato, MN  
10:00 a.m. to 4:00 p.m.

Multiple Rooms  
Otter Tail County Government Service Center  
500 Fir Avenue West  
Fergus Falls, Minnesota  
9:00 a.m.

Meeting Rooms 1 and 2  
Crow Wing County  
Land Services Building  
322 Laurel Street  
Brainerd, MN  
10:00 a.m.

Room To Be Determined  
Polk County  
612 North Broadway, Suite 207  
Crookston, MN  
10:00 a.m.

Houston County Courthouse  
204S. Marshall St, Room #111  
Caledonia, MN 55921  
9:00 a.m.

Ramsey County Election Office  
90 West Plato Blvd, St. Paul  
9:00 a.m.

Lincoln County Courthouse  
319 N. Rebecca St.  
Ivanhoe, MN  
10:00 a.m.

Hennepin County Government Center  
Room A-0710, 300 S. 6<sup>th</sup> Street  
Minneapolis, MN 55487  
11:00 a.m., continuing into Friday if needed

Grant County Courthouse  
10 2<sup>nd</sup> Street NE  
Elbow Lake, MN  
9:00 a.m.

Chisago County Government Center  
313 North Main Street  
Center City, MN  
11:00 a.m.

Pine County Courthouse, County Board Room  
635 Northridge Drive NW  
Pine City, MN  
8:30 a.m.

Clay County Board Room  
807 N. 11<sup>th</sup> Street  
Moorhead, MN  
10:00 a.m.

Washington County Property Records and  
Taxpayer Services Department  
1305 W. Frontage Road  
Stillwater, MN  
10:00 a.m.

FRIDAY, JANUARY 2nd

County Board Room  
Beltrami County  
Bemidji, MN  
10:00 a.m. to 3:00 p.m.  
(Second Meeting)

180 State Office Building  
Secretary of State's Office  
100 Rev. Dr. Martin Luther King, Jr.  
Saint Paul, MN  
10:00 a.m.